



SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis and Administration

June 6, 2008

Kathryn Kusske Floyd, Esq.
Mayer Brown LLP
1909 K Street, NW
Washington, D.C. 20006

Re: STB Finance Docket No. 34658, The Alaska Railroad Corporation – Petition for Exemption to Construct and Operate a Rail Line Between North Pole and Delta Junction, Alaska

Dear Ms. Floyd:

As you know, the Board's Section of Environmental Analysis (SEA) has preliminarily determined that the above-referenced project may have an effect on historic properties on or eligible for inclusion on the National Register for Historic Places. Accordingly, SEA has initiated the consultation process, pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f), with the Alaska State Historic Preservation Officer (SHPO), as well as the Federal agencies cooperating in the preparation of the Environmental Impact Statement (EIS) for this case. SEA will also initiate consultations with the Advisory Council on Historic Preservation (ACHP) at the time the Draft EIS is issued.

As part of the consultation process, SEA has prepared a draft Programmatic Agreement (Agreement) to be executed by the Board, ACHP, and SHPO. Additionally, the Federal cooperating agencies and the Alaska Railroad Corporation (ARRC) have been proposed as Invited Signatories in the draft Agreement. As a proposed Invited Signatory, we are providing ARRC with an opportunity to review and comment on the draft Agreement (see attachment). We would like to receive any ARRC comments on or suggested revisions to the draft Agreement by Friday, June 20, 2008.

Thank you for your continued cooperation in this case. If you have any questions, please do not hesitate to contact Dave Navecky, SEA's Project Manager, at 202-245-0294, or Alan Summerville, ICF's Project Manager, at 703-934-3616.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria Rutson". The signature is fluid and cursive, with the first name "Victoria" and last name "Rutson" clearly distinguishable.

Victoria Rutson
Chief
Section of Environmental Analysis

Attachment

**PROGRAMMATIC AGREEMENT
AMONG**

**SURFACE TRANSPORTATION BOARD,
ADVISORY COUNCIL ON HISTORIC PRESERVATION,
ALASKA STATE HISTORIC PRESERVATION OFFICER,
U.S. BUREAU OF LAND MANAGEMENT, ALASKA STATE OFFICE,
U.S. ARMY CORPS OF ENGINEERS, ALASKA DISTRICT,
U.S. DEPARTMENT OF DEFENSE, ALASKAN COMMAND,
U.S. AIR FORCE 354th FIGHTER WING, EIELSON AIR FORCE BASE,
FEDERAL TRANSIT ADMINISTRATION,
FEDERAL RAILROAD ADMINISTRATION,
AND U.S. COAST GUARD, SEVENTEENTH COAST GUARD DISTRICT**

REGARDING

**THE ALASKA RAILROAD CORPORATION, NORTHERN RAIL EXTENSION
BETWEEN NORTH POLE AND DELTA JUNCTION, ALASKA**

STB Finance Docket No. 34658

WHEREAS, the Surface Transportation Board (STB)¹, the lead Federal agency, has received an application for the construction and operation of a rail line by the Alaska Railroad Corporation (ARRC or applicant), extending its existing system between North Pole and Delta Junction, Alaska (Undertaking); and,

WHEREAS, the STB has determined that the proposed project is an Undertaking which may have an effect upon historic properties included on or eligible for inclusion on the National Register of Historic Places (NRHP), and is in consultation with the Advisory Council on Historic Preservation (Council); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); the United States Department of the Interior - Bureau of Land Management, Alaska State Office (BLM); the United States Army Corps of Engineers, Alaska District (USACE); U.S. Department of Defense, Alaskan Command (ALCOM); U.S. Air Force, 354th Fighter Wing, Eielson Air Force Base (354th Fighter Wing); U.S. Coast Guard (USCG), Seventeenth Coast Guard District; and the Alaska State Historic Preservation Officer (SHPO), pursuant to Section 800.14(b) of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act, 16

¹ The Surface Transportation Board (STB) was created with the passage of the ICC Termination Act of 1995 (Pub. L No. 104-88). The STB, an independent agency administratively housed within the U.S. Department of Transportation, is responsible for administering rail, pipeline, and certain adjudicatory functions involving motor and water carriers. These responsibilities are similar to those duties formerly administered by the Interstate Commerce Commission. The STB is the lead agency under the National Environmental Policy Act (NEPA) for the Northern Rail Extension Project.

U.S.C. 470f (NHPA); and,

WHEREAS, the STB, ACHP and SHPO are Signatories pursuant to 36 CFR 800.6(c)(1) and have sole authority to execute, amend or terminate this Programmatic Agreement (Agreement); and,

WHEREAS, the FTA, FRA, BLM, USACE, ALCOM, 354th Fighter Wing, USCG and ARRC are Invited Signatories pursuant to 36 CFR 800.6(c)(2) and have authority to amend or terminate this Agreement; and,

WHEREAS, the State of Alaska's Department of Natural Resources (ADNR) and invited Tribes and Indian Organizations are Concurring Parties pursuant to 36 CFR 800.6(c)(3). The refusal of any party invited to concur with this Agreement does not invalidate the Agreement; and,

WHEREAS, STB has consulted with and continues to consult with the Indian Tribes and tribal consortia outlined in Section C of this Agreement who may attach a religious and/or cultural significance to properties that may be affected by the Undertaking and these Tribes and consortia have been invited to participate in this Agreement as Concurring Parties; and

WHEREAS, the STB has determined that this Undertaking may affect historic properties eligible for the National Register of Historic Places (NRHP) during the life span of this Undertaking; and has consulted with the Council and the SHPO pursuant to Section 800.14(b) of the regulations (36 CFR 800) implementing Section 106 of the NHPA; and

WHEREAS, the Council has been invited to participate in this Agreement, and has chosen to do so; and,

WHEREAS, the STB, in consultation with the Signatories and Invited Signatories, has developed an Identification Plan (ID Plan) for inventory of cultural resources prior to construction, and has initiated consultation and identification, which has thus far identified 51 historic properties (see Potter 2006, *Site Location Model and Survey Strategy for Cultural Resources in the Alaska Railroad Northern Rail Extension Project Area*; Potter et al. 2007a, *Results of the 2006 Cultural Resource Survey of Proposed Alaska Railroad Northern Rail Extension Routes and Ancillary Facilities, Alaska*, and Potter et al. 2007b, *Results of the 2007 Cultural Resource Survey of Proposed Alaska Railroad Northern Rail Extension Routes, Alaska*); and,

WHEREAS, the applicable requirements of the NHPA, the American Indian Religious Freedom Act, 42 U.S.C. 1996 et. seq. (AIRFA), and the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et. seq. and 43 CFR 10 (NAGPRA), have been considered in the development of the ID plan and this agreement does not waive the responsibilities of the Signatories and Invited Signatories under these regulations; and,

WHEREAS, the lead Federal agency (STB), in conjunction with the FTA, FRA, BLM, USACE, ALCOM, 354th Fighter Wing, and USCG (i.e., cooperating agencies) has

prepared an Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA) to address the potential impacts of the Undertaking on a variety of human and natural resources; and,

WHEREAS, the STB may use an independent third-party contractor, working under its supervision, direction, and control, and at ARRC's expense, to assist in meeting the STB's responsibilities defined in the stipulations below; and,

NOW, THEREFORE, the Signatories and Invited Signatories to this agreement consent that the proposed Undertaking shall be implemented in accordance with the following stipulations in order to consider the effect of the Undertaking on historic properties and to satisfy all Section 106 NHPA responsibilities for all aspects of the Undertaking.

STIPULATIONS

The STB and SHPO shall ensure that the following measures are carried out:

I. Administrative Considerations:

- A. The STB and Invited Signatories shall attach this Agreement or the measures (stipulations) called for in this Agreement to any Record of Decision(s) (ROD), approval(s), or other condition(s) issued for this Undertaking so that this Agreement and its requirements become legally enforceable and binding on the applicant. The applicant shall comply with this Agreement and failure to do so could result in suspension, modification, or revocation of any or all approvals and conditions issued by the STB and SHPO.
- B. This Agreement and all of its requirements shall be binding on ARRC as applicant, its heirs, successors, and assigns.
- C. Because of both singular and overlapping legal authorities and purviews among the STB and Invited Signatories regarding individual Undertaking components or activities, any or all of these agencies may be responsible to carry out the terms of this Agreement for a given Undertaking component or activity. That agency or agencies that has/have purview over a given Undertaking component or activity is referred to in this Agreement as the "responsible agency(ies)," hereinafter. To promote coordination among the agencies and to expedite the conduct of tasks pursuant to this Agreement, the responsible agency(ies) can make informal arrangements among themselves regarding the implementation of this Agreement so long as the substance of this Agreement is followed. However, if there is more than one agency with purview over a given Undertaking component or activity, all involved agencies shall remain aware of the substance, progress, and any problems with implementing this Agreement for that Undertaking component or activity and remain involved to prevent and resolve problems. For certain larger Undertaking components and activities, it may be advisable for all involved

agencies to carry out the terms of this Agreement jointly.

- D. Within 30 days of the issuance of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, the STB and the SHPO shall consult and develop a brief Agency Consultation and Coordination Plan (ACCP) that outlines how the agencies shall coordinate with each other in carrying out the terms of this Agreement, including a list of anticipated Undertaking components and activities, and which will be the "responsible agency(ies)" for each. This ACCP may be amended as necessary by these parties as needed.
- E. The STB and Invited Signatories shall enforce the terms of this Agreement, approvals, and other conditions that incorporate this Agreement and its terms. Each shall notify the others if any of them becomes aware of an instance of possible non-compliance with the terms and conditions of this Agreement or permit or conditions as they relate to this Agreement. In such case, the "responsible agency(ies)" shall ensure compliance consistent with its/their legal authorities and consult with the other agencies, as needed.
- F. The STB, as lead Federal agency, is responsible for ensuring that the terms of this Agreement, approvals, and other conditions that incorporate this Agreement are carried out. The STB or the applicant (ARRC) shall not initiate or support any actions that may jeopardize a historic property or the completion of Agreement tasks without the prior written approval of the "responsible agency(ies)."

II. Historic Properties, Areas of Potential Effect, and the Applicability of this Agreement:

- A. This Agreement shall apply to the Undertaking and all components of it, including those not known at this time or not specified in the EIS, approvals, permits, permit applications, or other documents so long as they are within the jurisdiction of the STB and Invited Signatories.
- B. ARRC and the STB, in consultation with the SHPO, shall determine the Areas of Potential Effect of the Undertaking and its components, using the concepts and definitions for Area of Potential Effect (APE), Historic Property, Effect, Adverse Effect, etc. as outlined in 36 CFR Section 800.16. For the purpose of this Agreement, a historic property is defined as: a district, site, building, structure or object, including landscape, that meets eligibility requirements for the NRHP under 36 CFR 60.4 including properties to which a tribal organization or other party attaches religious and/or cultural significance in accordance with National Register Bulletin #38.

III. Tribal Consultation:

ARRC and the STB shall consult with those tribal organizations and consortia outlined in Section C of this Agreement in carrying out the terms of this Agreement. Within 30 days

of any STB Final Decision granting ARRC the authority to construct and operate the Undertaking, ARRC and STB, in consultation with the SHPO and tribal organizations and consortia in Sections A through C of this Agreement, shall develop a Tribal Consultation Plan that outlines procedures for agencies to consult with these organizations and consortia in carrying out the terms of this Agreement. This Plan shall be acceptable to the tribal organizations and consortia and describe when and how these organizations and consortia shall be consulted, the contact names and information for each organization and consortia, and other matters. This Plan may be amended as needed. The procedures in the Consultation Plan will be integrated into the agencies' implementation of this Agreement.

IV. Identification Plan for Historic Properties and Assessment of Effects:

- A. The STB and ARRC shall make a reasonable and good faith effort to identify and evaluate historic properties eligible for the NRHP within each Undertaking activity or component's APE. Prior to the initiation of identification and evaluation efforts, the STB shall consult with the SHPO regarding the level and scope of efforts. If the STB and SHPO disagree as to what constitutes adequate identification and evaluation efforts, the ACHP shall make this determination. If a dispute or objection remains on this issue, these parties shall resolve it in accordance with stipulation XIII below.
- B. Necessary identification efforts may include background research, consultation, ethnographic research, oral history interviews, field surveys, probabilistic sampling, subsurface testing, and other types of tasks. In determining the level of identification and evaluation efforts necessary, such factors as past planning, research and studies, the magnitude and nature of the Undertaking, the extent of potential effects on historic properties, and the nature and location of historic properties within the APE will be examined.
- C. All archaeological and historical investigations shall be conducted by anthropologists, archaeologists, historians, architectural historians, and/or historical architects meeting the qualifications in the *Archaeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (Standards and Guidelines) (48 FR 44716-44742). The technical expertise of the professional shall be appropriate to the nature of the investigation and expected type and significance of historic properties.
- D. The "responsible agency(ies)" shall apply the NRHP criteria (36 CFR 60.4) to identified properties, in consultation with the SHPO and any tribal organization that may attach religious and/or cultural significance to the identified property. The "responsible agency(ies)" shall resolve disagreements among these parties regarding NRHP eligibility by requesting a determination of eligibility from the Keeper of the National Register, National Park Service in accordance with 36 CFR Part 63, whose determination shall be final.

E. The "responsible agency(ies)," in consultation with the SHPO and in accordance with 36 CFR 800.5, shall make an assessment of whether an Undertaking component or activity may have an adverse effect on historic properties and the necessary treatment of the historic property as outlined in stipulation V below. ARRC will not initiate any activities that may cause direct or indirect impacts to a historic property without prior written approval from the "responsible agency(ies)."

F. Specific Identification Efforts:

Identification efforts were carried out in 2006 and 2007. These actions have thus far identified 51 historic properties² (see (1) Potter 2006, (2) Potter et al. 2007a, (3) Potter et al. 2007b). Additional areas that will be evaluated for cultural resources prior to construction include (but are not limited to):

- (1) portions of any alternative for which ARRC has received authority from the STB to construct and operate that have not received survey during the 2006-2007 investigations,
- (2) any ancillary facility locations for which ARRC has received authority from the STB to construct and operate that have not received survey during the 2006-2007 investigations,
- (3) any areas of surface/subsurface disturbance related to the Undertaking occurring outside of the stipulated APE,
- (4) any route changes that result in an area of surface/subsurface disturbance outside the stipulated APE, and
- (5) any new material site where material is excavated for the use on this Undertaking (if the area of disturbance has not previously been evaluated).

G. Specific Evaluation Efforts

Using the site location model (Potter 2006), historic background information (Potter et al. 2007a and Potter et al. 2007b), and with SHPO concurrence, the STB shall evaluate the areas specified in F above for cultural resource site potential.

Two possible outcomes exist:

1. If cultural resources may be adversely impacted, then three investigation mechanisms will be used, (as described in Potter 2006; Potter et al. 2007a; Potter et al. 2007b, and in the EIS):
 - (a) aerial and site photo analysis (for areas with minimal anticipated

² As of September 2007, 51 are prehistoric sites considered eligible by SHPO for inclusion in the National Register under Criteria D. A total of 23 sites lie within the APE as defined as of 2/1/8.

impacts (e.g., 100 square feet).

- (b) Type A (helicopter-based survey), and
- (c) Type B (ground transect survey).

For large areas of alignment and/or ancillary facilities, the site location model may be applied to determine whether Type A or Type B survey is necessary.

2. If cultural resources are not adversely impacted, as determined by the STB and concurred by SHPO, then no further action is required.

Undertaking elements categorically excluded from Section IV.G of this Agreement include:

- (a) areas previously cleared by the SHPO (i.e., determination of No Historic Properties Affected),
- (b) proposed use of existing access roads (provided disturbance is within the existing ROW), and
- (c) areas where Undertaking impacts are demonstrated to not adversely affect cultural resources (surface and subsurface). Documentation of this (singly, or for a class of elements) must be provided by the STB to the SHPO for a determination.

H. Testing and evaluation of sites

For those areas requiring survey (see IV.F and IV.G above), a phased approach to identification and evaluation of cultural resources will be utilized, as described in IV.G(1). If remote sensing methods for site identification, including analysis of predictive modeling and aerial photo interpretation, as well as Type A (helicopter) survey, determine there is a reasonable potential for cultural resources to occur within a portion of the Undertaking's APE, then Type B ground survey will be conducted in those locations. Specific testing protocols will follow the established conventions for this Undertaking (Potter 2006), will be developed in consultation with the STB and the SHPO, and will be approved by the SHPO prior to the start of fieldwork.

Those cultural resources within the APE will be mapped using GPS, and the horizontal boundaries established through subsurface systematic testing. Data will be gathered through testing and laboratory analysis to determine eligibility for listing on the NRHP (e.g., site age, nature of cultural material, stratigraphy, integrity, and site disturbance). Deep tests may be warranted if it is determined that an adverse effect could occur to certain landforms, including deep sand dunes where archaeological components of about 13,000 years old have been found to

exist at depths of at least 2.5 meters below surface. Evaluations of resources will be made by professionals meeting the Secretary of Interior Standards as described in Section IV.C, with concurrence by the STB and the SHPO. If cultural resources, including (but not limited to) archaeological sites, historic structures, historic districts, or traditional cultural properties are not eligible for listing on the NRHP, then no further action is necessary. If the resources are determined eligible to the NRHP, then criterion of affect will be applied to the resource relative to the constituents of the Undertaking, including the alignments, access roads, sidings, material sites, etc. If the properties fall outside the APE and will not be adversely affected, then no further action is required. If the properties fall inside the APE or it is determined that they will be adversely affected by the Undertaking, then a mitigation procedure will be followed (see below).

V. Treatment of Historic Properties:

- A. ARRC shall ensure to the extent possible the avoidance of all known historic properties, including archaeological and historical sites, historic buildings, structures, and landscapes.
- B. If any historic property on or eligible for the NRHP cannot be avoided, and would be adversely affected, ARRC shall develop a mitigation or treatment plan in consultation with the "responsible agency(ies)," SHPO, tribal organizations that may attach religious and/or cultural significance to the identified property, and other interested parties. During the preparation of the treatment or mitigation plan, the STB shall consider the views of these parties and the public, and shall document methods of involving the public.
 - 1. If the property is archaeological in nature, significant for the research data potential (criterion D), the mitigation or treatment plan shall include a research design with provisions for data recovery and recordation, analysis, reporting, and curation of resulting collection and records in an institution as outlined in stipulation VIII below. Archaeological recovery, analysis, and reporting shall conform with the *Secretary of Interior's Standards and Guidelines for Archaeological Documentation* (Archaeological Documentation Guidelines) (48 FR 44734-44737). Within one year of completing fieldwork or treatment, ARRC shall complete reports that are acceptable to the STB and SHPO, meet the Archaeological Documentation Guidelines, and any guidelines of the SHPO.
 - 2. If the historic property is a building, structure, landscape, or is significant for values other than the data that it contains (under criteria A, B, or C), the plan shall specify approaches for the mitigation or treatment of the property in accordance with the principles, standards, and guidelines contained in the Standards and Guidelines. This may include but not be limited to use of such approaches as relocating a historic property, re-landscaping to reduce effects, public interpretation, ethnographic

recordation, prescribing use of a component or activity of this Undertaking in such a way as to minimize effects to historic properties or to those concerned about the effects of that component or activity. Methods of recordation and documentation described in the mitigation plan shall conform with the *Secretary of the Interior's Standards for Architectural and Engineering Documentation* (48 FR 44730-44734) or other standards specified by SHPO.

- C. The SHPO, "responsible agency(ies)," and tribal organizations that may attach religious and/or cultural significance to the identified property shall review the mitigation or treatment plan and within 30 days of receipt of the mitigation plan shall provide written comments to the STB and ARRC, who shall incorporate the comments into the final version. Disputes or objections to the mitigation or treatment plan shall be resolved in accordance with stipulation XIII below.

D. Specific Mitigation Efforts

Mitigation is different for historic properties based on age and context; the two primary types of historic properties for this Undertaking are prehistoric and historic archaeological sites, and historic sites related to Salchaket Village (see Potter et al. 2007a). Mitigation protocols for each are described below.

1. Mitigation of Prehistoric and Historic Archaeological Sites:

If an historic property that is an archaeological site is adversely affected by this Undertaking, there are two avenues for mitigation, avoidance and data recovery.

- (a) Avoidance. The first alternative is avoidance through engineering redesign or relocation. The redesign would need to avoid any adverse effects to any portion of the site(s) as mapped and described above. If the redesign or relocation involves any change in the APE, a cultural evaluation (through site and aerial photographs) or survey will be required. Given the proximity of the known prehistoric cultural material to the surface, sites generally cannot be avoided through burial³ (i.e., placement of fill on top of an existing ground surface). However, burial of deeply buried prehistoric sites may be considered on a case-by-case basis as an avoidance strategy if two criteria are met: (1) quantifiable, peer-reviewed experiments from similar geomorphic and subArctic vegetation settings demonstrate that no adverse effect will occur, and (2) such burial strategy is part of a treatment plan approved in

³ Adverse impacts include dislocation of artifacts, ecofacts, and features and destruction of contextual relationships, destruction of small, friable faunal remains, and contamination of organic and radiocarbon datable material.

writing by Signatories and Invited Signatories.

- (b) Data recovery. The second alternative for mitigation involves data recovery. This would entail an excavation of a portion of the site, including standard analyses (radiocarbon dating, faunal, lithic, spatial, and geoarchaeological analyses) and reporting. Each site will require a research design with clear objectives and methods for achievement of concurrence or modification by the SHPO. Data recovery includes analysis of site and documentation. Once the data recovery is complete, including appropriate professional report, no further cultural resource actions are required.

2. Mitigation of Historic Properties Related to Salchaket Village:

Large portions of the Salchaket village area were not surveyed in 2006-2007 due to the presence of private property and native allotments. If Salcha Alternative Segment 2 is authorized for construction and operation by the STB, future data collection will be necessary to determine National Register eligibility (significance and integrity) of the sites identified during the survey (XBD-293-294; possibly others). A comprehensive survey supported with oral history and archival research to situate these features within the overall context of Salchaket Village (XBD-067) would be required. These sites are likely considered eligible under Criteria A, B, and D, but more research is needed to fully assess their significance. This evaluation procedure should be concurrent with ongoing consultation with interested tribal and other parties.

If the sites are considered significant (i.e., historic properties), their boundaries will be evaluated relative to the APE (alignments and ancillary facilities). If the site is not directly affected by the Undertaking, then no further action is necessary. If the site is impacted, two alternatives may occur; (1) avoidance of the site or significant features within the site through engineering redesign or relocation, or (2) data recovery, to the extent required by the SHPO. Once data recovery is completed, no further cultural resource actions are required.

VI. Treatment of Human Remains:

It is the intent of this Undertaking to totally avoid the disturbance or removal of any human remains. No activity will knowingly disturb human graves or human remains. If human remains, sacred objects, or mortuary objects are inadvertently discovered during the course of activities, all related activities in the immediate vicinity shall immediately cease and a Plan of Action (POA) for the treatment of human remains (Appendix A) shall be implemented. The STB and ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of these Undertaking activities will be treated with dignity and respect.

VII. Monitoring:

- A. If stipulated as part of a Treatment Plan, when the probability to uncover unidentified archaeological or historic materials is determined likely by the consulting archaeologist or SHPO, ARRC shall ensure that an archaeologist meeting the qualifications of the Standards and Guidelines is present in specific areas of ground disturbing activity.
- B. The results of monitoring shall be included in a report to the STB and SHPO. This report shall be developed, within 3 months of fieldwork and be acceptable to both the "responsible agency(ies)" and the SHPO.
- C. If sites are discovered during monitoring, ARRC shall follow the procedures outlined in Stipulation X of this Agreement.
- D. If human remains are discovered during monitoring, ARRC shall follow the procedures outlined in Appendix A.

VIII. Curation:

- A. ARRC shall ensure that all artifacts, faunal remains, samples, records and field notes, and related materials collected during activities covered by this Agreement shall be deposited in the University of Alaska Museum at Fairbanks, or another institution approved by the SHPO.
- B. A formal curation agreement between ARRC and an approved institution must be secured prior to the implementation of any data recovery actions that, in the opinion of the SHPO or consulting archaeologist, may result in a sizable collection.
- C. ARRC shall incur any and all costs charged by the approved institution for curation of materials collected in conjunction with recovery actions under this Agreement.
- D. ARRC, in consultation with the receiving institution, the SHPO, and conservation specialist(s), shall ensure that collected materials are conserved and packaged in a manner acceptable to the State and receiving institution.
- E. Materials collected in conjunction with recovery actions under this Agreement are the property of the landowner.

IX. Annual Review and Reports:

- A. Meetings
 - 1. Annual Meeting: A meeting of the Signatories and Invited Signatories, as well as the Concurring Parties if they so wish, may be held each year to

discuss the previous year's activities, and activities scheduled for the upcoming year. The meeting would be held in Anchorage at the Alaska Office of History and Archaeology, or at another location by consensus of the Signatories and Invited Signatories. The parties may be contacted by telephone if they so desire.

2. Additional Meetings: If any party deems a meeting necessary in addition to the annual meeting described above, that party shall inform the other parties, who shall consider the request in consultation with the other parties.
3. Meeting Minutes: ARRC shall provide all Signatories, Invited Signatories, and Consulting Parties the minutes of the meetings described above within 15 calendar days of the date of the meeting(s). Corrections from Signatories, Invited Signatories, and Consulting Parties shall be made by ARRC.

B. Reports

1. Annual Report. Each year, at least 45 calendar days prior to any Annual Meeting, ARRC will provide Signatories, Invited Signatories, and Consulting Parties a written draft report of previous and upcoming activities as they relate to compliance with the stipulations of this Agreement. The report will include the following:
 - (a) A description of the past year's activities;
 - (b) A projection of the upcoming year's activities, including information about anticipated components and activities of the Undertaking and possible changes to the Undertaking;
 - (c) A summary of the past year's effort and anticipated upcoming efforts for identification, evaluation, and protection of historic properties;
 - (d) Descriptions of any historic properties affected, as well as any testing, remediation, or mitigation efforts;
 - (e) Descriptions of artifacts or other archaeological or historic materials encountered, including representative photographs or drawings, a description of analyses, and other recordation documents as appropriate;
 - (f) Clear illustrations of areas surveyed or monitored, cultural resources identified, and alternative routes to be followed to avoid any identified historic properties;

- (g) An evaluation of the effectiveness of the Agreement and whether any amendments or changes are needed; and
 - (h) An evaluation of the ARRC Plan of Operations for the upcoming year's work and whether amendments to it are necessary.
2. Certain archaeological surveys, special excavations, and/or testing efforts may require individual reports outside the normal reporting cycle in order to facilitate decision making processes. The scope and time parameters for these reports shall be determined on a case-by-case basis by the "responsible agency(ies)" and the SHPO.

X. Procedures for Inadvertent Discoveries:

- A. Upon the inadvertent discovery of a potential historic property in any activity's APE, all work in the vicinity shall immediately cease and ARRC shall protect the discovery site against further disturbance.
- B. Within 24 hours of the discovery, and preferably before the end of the work day, ARRC shall notify the STB, the landowner and SHPO of the discovery. If none of these individuals can be reached on the weekend, ARRC shall contact them through telephone on the next business day. In addition to telephone notification, and insofar as on-site technology will permit, ARRC shall notify all these parties via facsimile and email means.
- C. The STB, SHPO, ARRC, and other parties as deemed necessary shall confer in person or by telephone. If the parties agree that the discovery is not significant, verbal authorization to proceed may be given by the SHPO.
- D. If the consulting parties agree that the discovery may be significant, ARRC shall proceed with evaluation, and if necessary, the preparation of a mitigation or treatment plan in accordance with stipulation V of this Agreement or the POA in stipulation VI of this Agreement, as appropriate.
- E. Upon the inadvertent discovery of human remains, sacred objects, or mortuary objects in any activity's APE, all work in the vicinity shall immediately cease and a POA for the treatment of human remains (Appendix A) shall be implemented. ARRC shall ensure that any and all human remains, sacred objects, and objects of cultural patrimony discovered as a result of activities related to the Undertaking will be treated with dignity and respect.
- F. Certain archaeological surveys, special excavations, and/or testing efforts may require individual reports outside the normal reporting cycle in order to facilitate decision making processes. The scope and time parameters for these reports shall be determined on a case-by-case basis by the Signatories in consultation with ARRC.

XI. Training:

- A. On an annual basis, ARRC shall train employees in procedures for identifying and reporting historic properties that may potentially be discovered during the course of their work. Minimally, the training shall include identification, discovery, and notification procedures when archaeological materials, human remains, and historic period sites are discovered.
- B. ARRC shall also ensure that its contractors and employees are advised against the illegal collection of historic and prehistoric materials, including human remains, and are familiarized with the scope of applicable laws and regulations.
- C. Prior to the implementation of training, the curriculum shall be reviewed and approved by the STB and SHPO.
- D. Training shall be conducted by an archaeologist meeting the qualifications of the Standards and Guidelines, with the exception that ARRC's supervisory level employees may attend the above training and convey the information to staff unable to attend.
- E. On an annual basis, ARRC shall supply to the STB and SHPO a list of personnel who attended the annual training, and procedures through which the information was conveyed to employees who did not attend.

XII. Procedures for Consultation:

Consultation shall be an ongoing process, and the STB, SHPO, Indian tribes and consortia, other consulting parties, and the ACHP may consult at any time in writing, including e-mail, or telephone.

XIII. Dispute Resolution:

Should any party to this agreement object within 30 days of any report provided for review or actions proposed pursuant to this agreement, STB and the SHPO shall consult with the objecting party to resolve the objection.

- A. If the STB and/or SHPO determine that the objection cannot be resolved, the STB shall forward all documentation relevant to the dispute to the ACHP. Within 30 days after receipt of all pertinent documentation, the Council will either:
 - (1) Provide the STB with recommendations, which they will take into account in reaching a final decision regarding the dispute; or
 - (2) Notify the STB that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any Council comment provided in response to such a request shall be taken into account by the STB in accordance with 36 CFR 800.7 with reference to the subject of the dispute.

- (3) Any recommendation or comment provided by the Council shall be understood to pertain to the subject of the dispute; the STB's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute shall remain the same.

B. At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure or its manner of implementation be raised by a member of the public, the STB shall take the objection into account and consult as needed with the objecting party, SHPO, or the Council to resolve the objection.

XIV. Amendments:

Any Signatory or Invited Signatory to this Agreement may request that the other Signatories consider amending it, whereupon the parties shall consult to consider the amendment(s). Amendments will be executed in the same manner as the original Agreement. Concurring Parties may suggest proposed amendments to the Signatories and Invites Signatories, who shall consult to consider them.

XV. Termination:

Any Signatory or Invited Signatory to this agreement may terminate it by providing thirty (30) days notice to the other parties explaining the reasons for the termination. The Signatory or Invited Signatory shall consult during this period to seek agreement on amendments or other actions that will avoid termination. In the event of termination, the STB will comply with 36 CFR 800.1 through 800.7 on remaining Undertaking components, activities, or outstanding issues.

XVI. Failure to Carry Out Agreement:

If the STB does not ensure that the terms of this Agreement are carried out, or if the Council determines that the terms of this Agreement are not carried out, the STB shall comply with 36 CFR Part 800.1 through 800.7 with regard to individual Undertakings covered by this Agreement.

XVII. Duration:

This Agreement shall become effective upon execution by the STB, the ACHP, and the SHPO and shall remain in effect for a term of five years from its date of execution.

XVIII. Execution and Implementation:

Execution and implementation of this Agreement evidences that the STB has satisfied responsibilities under Section 106 of the National Historic Preservation Act pursuant to 36 CFR 800, and that SHPO has satisfied responsibilities under the Alaska Historic Preservation Act pursuant to AS 41.35.

A. SIGNATORIES

Surface Transportation Board

By: _____ Date: _____
Victoria Rutson, Chief, Section of Environmental Analysis

Advisory Council on Historic Preservation

By: _____ Date: _____
(Name, Title)

Alaska State Historic Preservation Officer

By: _____ Date: _____
Judith E. Bittner,
State Historic Preservation Officer

B. INVITED SIGNATORIES

Cooperating Agencies and Alaska Railroad Corporation

Cooperating Federal Agencies

U. S. Department of Interior - Bureau of Land Management, Alaska State Office

By: _____ Date: _____
(Name, Title)

U. S. Army Corps of Engineers

By: _____ Date: _____
(Name, Title)

U.S. Air Force 354th Fighter Wing, Eielson Air Force Base

By: _____ Date: _____
(Name, Title)

U.S. Department of Defense, Alaska Command

By: _____
(Name, Title)

Date: _____

Federal Transit Administration

By: _____
(Name, Title)

Date: _____

Federal Railroad Administration

By: _____
(Name, Title)

Date: _____

United States Coast Guard, Seventeenth Coast Guard District

By: _____
(Name, Title)

Date: _____

Applicant

Alaska Railroad Corporation

By: _____
(Name, Title)

Date: _____

C. Concurring Parties

Agencies

State of Alaska, Department of Natural Resources

By: _____
Director, Division of Mining, Land, and Water

Date: _____

Tribes

Healy Lake Village

By: _____
(Name, Title)

Date: _____

Village of Dot Lake

By: _____
(Name, Title)

Date: _____

Northway Village

By: _____
(Name, Title)

Date: _____

Native Village of Tetlin

By: _____
(Name, Title)

Date: _____

Native Village of Tanacross

By: _____
(Name, Title)

Date: _____

Native Village of Eagle

By: _____
(Name, Title)

Date: _____

Nenana Native Association

By: _____ Date: _____
(Name, Title)

Native Village of Minto

By: _____ Date: _____
(Name, Title)

Tok Native Association

By: _____ Date: _____
(Name, Title)

Indian Organizations

Tanana Chiefs Conference, Inc.

By: _____ Date: _____
(Name, Title)

Doyon, Ltd.

By: _____ Date: _____
(Name, Title)

Upper Tanana Inter-Tribal Coalition

By: _____ Date: _____
(Name, Title)

Glossary of Terms/Acronyms

Adverse Effect: When an undertaking may alter, directly or indirectly, the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.

APE: The Area of Potential Effect (APE) is the geographic area within which the project may cause physical, visual or audible effects to the character or use of historic properties. It includes all areas of construction, such as rights-of-way (ROW), staging areas, extra work spaces, yards, access roads, borrow areas, and other ancillary facilities. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Area of Potential Effect: See APE.

Borrow Area(s): An excavated area where material has been or will be dug for use as fill at another location.

Consulting Parties: Consulting parties include SHPO, Indian tribes, representatives of local governments, applicants for Federal assistance, permits, licenses and other approvals, and certain individuals and organizations with a demonstrated interest in the undertaking.

Cultural Resource: A cultural resource is any prehistoric or historic district, site, building, structure or object in American history, architecture, engineering, archeology, or culture. This term includes artifacts, records, and remains that are related to and located within such properties. The term also includes properties of traditional religious and cultural importance to an Indian Tribe that may meet the National Register criteria.

Curation: The preservation of material remains that are excavated or removed during a survey, excavation, or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation or other study.

Days: Calendar days.

Eligible for the National Register of Historic Places: The term eligible for the National Register includes both properties formally determined as such in accordance with the regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Federal Agency(s): Any Federal entity with a statutory obligation to fulfill the requirements of Section 106 who has jurisdiction over an undertaking and takes legal and financial responsibility for Section 106 compliance in accordance with Subpart B 36 CFR 800. The Federal Agency(s) has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of Section 106 compliance.

Historic Property: Any prehistoric or historic district, site, building structure, or object included in or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe that meet the National Register criteria.

Human Remains: The physical remains of a human body.

ID Plan: Identification Plan.

Indian Tribe: An Indian Tribe, band, nation, or other organized group or community, including a Federally-recognized Native Village, Regional Corporation or Village Corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 T.I. S. C 1602) which is recognized eligible for the special programs and serviced provided by the United States to Indians because of their status as Indians.

Keeper of the National Register: The Keeper is the individual who has been delegated the authority by the National Park Service (NPS) to list properties and determine their eligibility for the National Register. The Keeper may further delegate this authority as he or she deems appropriate.

NAGPRA: Native American Graves Protection and Repatriation Act.

National Register: The National Register lists properties formally determined eligible for the National Register of Historic Places.

National Register Criteria: National Register criteria are criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR 60). The National Register of Historic Places criteria are listed below:

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of state and local importance that possess integrity of location, design, setting, materials, workmanship and feeling and:

- a. that are associated with the events that have made a significant contribution to the broad patterns of our history; or

- b. that are associated with the lives of persons significant in our past; or
- c. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic value, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- d. that yielded, or may be likely to yield, information on prehistory or history.

Criteria considerations: ordinarily cemeteries, birthplaces, or graves of historical figures; properties owned by religious institutions or used for religious purposes; structures that have been moved from their original locations, commemorative in nature; and properties that have achieved their significance within the past 50 years shall not be considered eligible for the National Register of Historic Places (36 CFR 60.4).

NRHP: National Register of Historic Places.

PA: Programmatic Agreement.

SHPO: State Historic Preservation Officer.

Site: Site definition is different for each state but is generally defined by Willey and Phillips (1958:18), as any reasonably definable spatial unit that contains features or is fairly continuously covered with artifacts that are indicative of an occupation 50 years or older. A site may be defined as "a spatial cluster of cultural features, or items, or both" (Binford 1972:46). These definitions apply to both prehistoric and historic sites.

Archaeological context may be defined by the inclusion of any of the following: soil staining, associated fire-cracked rock, ceramics, features, or a concentration of materials within a reasonably defined spatial boundary.

STB: Surface Transportation Board.

Traditional Cultural Properties: A traditional Cultural Property can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that communities' history, and (b) are important in maintaining the continuing cultural identity of the community.

Treatment Plan: A proposal for the mitigation of effects upon any historic property that a project would affect. It can include data recovery, documentation, restoration or other measures.

Undertaking: An undertaking is a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit; license or approval; and those subject to state or local regulation pursuant to a delegation or approval by a Federal agency.

Appendix A.

Plan of Action for the Treatment of Unanticipated Discovery of Human Remains, Graves and Historic Properties

A.1. Human Remains and Graves

As set forth in Native American Graves Protection and Repatriation Act (NAGPRA) regulations, a specific plan of action is required in the event that human remains are uncovered during survey or construction of the Alaska Railroad Corporation's (ARRC) proposed Northern Rail Extension (i.e., Undertaking). The following steps must be taken if human remains, or suspected human remains, are discovered:

- (1) Stop all work in the immediate vicinity of the remains.
- (2) Mark the area in which the remains are located, as well as a minimum buffer area with a radius of 20 meters surrounding the remains. This buffer area may be larger if there is the possibility of more remains in the area or in the case of slopes or cut banks where work located nearby may impact the site of the remains. Make sure that the remains are protected from possible impacts while contacting the appropriate parties⁴.
- (3) If remains are found that are not clearly human, but are suspected to be so, a specialist must be called in for identification.⁵
- (4) The ARRC Project Manager should contact the following people or agencies in writing within 24 hours of uncovering the remains.
 - (a) The State Historic Preservation Officer (SHPO):
Judith Bittner
Alaska Department of Natural Resources
Office of History and Archaeology
550 West 7th Avenue
Anchorage, AK 99501-3561
Phone: (907) 269-8715
Fax: (907) 269-8908
 - (b) Federal agency official in charge:

⁴ Ways of protecting the remains include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the remains.

⁵ The specialist must meet the professional qualifications for the NHPA as set forth in 36 CFR 61, section 112 (a)(1).

Victoria Rutson
Chief, Section of Environmental Analysis
Surface Transportation Board
395 E Street SW
Washington, DC 20423
Phone: (202) 245-0295
Fax: (202) 245-0454

- (c) The responsible Native representative for the area of discovery:

Gary Lee
Doyon Ltd.
1 Doyon Place, Suite 300
Fairbanks, AK 99701
Phone: (907) 459-2037
Fax: (907) 459-2062

and

Robert Sattler
Tanana Chiefs Conference, Inc.
122 1st Avenue, Suite 600
Fairbanks, AK 99701
Phone: (907) 452-8251, ext. 3343
Fax: (907) 459-3936

and

- (d) The Alaska State Troopers
Alaska State Troopers
Communications Center Manager
Phone: (907) 451-5100
Fax: (907) 451-5165

Notification should include a detailed description of the nature and extent of the remains and an accurate and precise location including GPS coordinates.

NAGPRA dictates that work in the immediate vicinity of the remains cannot proceed until 30 days after the reply from the Federal agency in charge or appropriate Native group that the documents regarding the finding were received, unless a written and binding agreement is issued from the Federal agency in charge and the affiliated Native American group(s) (NAGPRA 25 U.S.C. 3002 Sec 3(d)).

The remains will then be assessed and treated based on the guidance of the Federal agency in charge and the appropriate Native group as defined by NAGPRA.

A.2 Plan for Unanticipated Historic Properties

Cultural resources, both historic and prehistoric, may be encountered above ground and below ground during work on the Undertaking. In the event that cultural materials are discovered, a plan must be in place to deal with these resources. This plan must be in compliance with both NAGPRA and the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470) and implementing regulations (36 CFR 800).

Historic property is defined in the NHPA as “any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register, including artifacts, records, and material remains related to such a property or resource.” (NHPA Sec 301 (5)). The determination must be made by a qualified archaeologist (36 CFR 61, 112 (a)(1)) and concurred with by the SHPO.

In addition to archaeological sites and historic structures there are other types of cultural resources that may be encountered. These are rural historic landscapes and traditional cultural properties. Rural historic landscapes are defined as “a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features.” (McClelland et al. 1995). Rural historic landscapes typically reflect common occupational activities such as farming, mining, or fishing. Examples may include villages with associated dwellings, boats, etc., or farmsteads with homes, outbuildings, barns, fences, roads and fields. A traditional cultural property (TCP) is defined as having an “association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important for maintaining the continuing cultural identity of the community” (Parker and King 1995). An example would be a locality used by generations of a Native American group for ritual activities. Such TCPs may have associated physical remains.

If archaeological or historic materials are encountered there are a series of steps that must be followed:

- (1) Stop all work in the immediate vicinity of any cultural resources or suspected cultural resources.
- (2) Mark the area in which the resources are located, as well as a minimum buffer area with a radius of 20 meters surrounding them. This buffer area may be larger if there is the possibility of more resources in the area or in the case of slopes or cut banks where ongoing work may impact the site. Make sure that all cultural materials are protected from possible impacts while contacting the appropriate parties⁶.

⁶ Options for protecting the cultural resources include: covering with a tarp or other protection from the elements; shoring up cut banks or trench walls so that no further exposure occurs; making sure that no water will collect on or around the site.

(3) ARRC's Project Manager should contact the following people or agencies in writing within 24 hours of discovering the resources.

(a) See previous list at A.1(4).

Notification should include a detailed description of the nature and extent of the cultural resources and an accurate and precise location including GPS coordinates.

A.3 List of contacts for Native representatives

Common Name: Dot Lake
President, William Miller
Village of Dot Lake
P.O. Box 2279
Dot Lake, Alaska 99737
Voice: (907)-882-2695 Fax: (907)-882-5558

Common Name: Healy Lake
President, Fred Kirsteatter
Healy Lake Village
P.O. Box 60300
Fairbanks, Alaska 99706
Voice: (907)-876-5018 Fax: (907)-876-5013

Common Name: Minto
Chief, Roy Charles
Native Village of Minto
P.O. Box 26
Minto, Alaska 99758
Voice: (907)-789-7112 Fax: (907)-798-7627

Common Name: Nenana
Chief, Mitch Demientieff
Nenana Native Association
P.O. Box 356
Nenana, Alaska 99760
Voice: (907)-832-5461 Fax: (907)-832-1077

Common Name: Northway
President, Gerald Albert
Northway Village
P.O. Box 516
Northway, Alaska 99764
Voice: (907)-778-2311 Fax: (907)-778-2220

Common Name: Tanacross
Executive Director, Jerry Isaac
Native Village of Tanacross
P.O. Box 76009
Tanacross, Alaska 99776
Voice: (907)-883-4496 Fax: (907)-883-4497

Common Name: Tetlin
President, Bently Mark, Sr.
Native Village of Tetlin
P.O. Box TTI
Tetlin, Alaska 99780
Voice: (907)-324-2130 Fax: (907)-324-2131

Common Name: Eagle Village
President, David Howard
Native Village of Eagle
P.O. Box 19
Eagle, Alaska 99738
907-547-2271

The Upper Tanana Inter-Tribal Coalition (UTIC) consists of six Federally-recognized tribes:

Tribe: Village of Dot Lake
ANSCA Corporation: Dot Lake Native Corporation
Phone: 907-882-2695

Tribe: Native Village of Eagle
ANSCA Corporation: Hungwitchin Corporation
Phone: 907-547-2271

Tribe: Healy Lake Village
ANSCA Corporation: Mandas Chaag Native Corporation
Phone: 907-876-5055, 907-876-5018

Tribe: Northway Village
ANSCA Corporation: Northway Natives Incorporated
Phone: 907-778-2311

Tribe: Native Village of Tanacross
ANSCA Corporation: Tanacross Incorporated
Phone: 907-883-5024

Tribe: Native Village of Tetlin
ANSCA Corporation: Tetlin Native Corporation
Phone: 907-324-2130